

REMARKS/ARGUMENTS

Applicants respond herein to the Office Action dated July 23, 2007.

Applicants' attorneys appreciate the Examiner's continued thorough search and examination of the present patent application.

Claims 1-23 and 25-35 are pending in this application. Claims 5, 8, 18, 20, 22 and 33-35 have been withdrawn from consideration. Claim 14 has been allowed. Claims 1-4, 6, 7, 9-12, 15, 17, 19, 21, 23 and 25-32 have been rejected. Claims 13 and 16 have been objected to but would be allowable if rewritten in independent form.

Claims 1-4, 6, 7, 9-12, 14, 17, 19, 21, 23 and 25-32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Canadian Patent Application No. 2 375 246 to Giampavolo ("Giampavolo") in view of U.S. Patent No. 5,913,501 to Heuss et al. ("Heuss"). Reconsideration and withdrawal of this rejection are respectfully requested.

Heuss teaches a stacker base having fixed size corner and connector members. The corner members include extensions 25, 26 at the bottom of the rear wall 27, 28. The connector members include extensions 40, 44 at the bottom of the rear and front walls 41, 43. The stacker base is formed by positioning four corner members and fastening four connector members on top of the corner members.

Claims 1, 7, 10, 12, 21, 25, 27, and 31, describe modular guard sections "having top and bottom portions disposed between front and back portions." In other words, contrary to Heuss, the bottom portion recited in the claims of the present application lies within and does not extend beyond the limits set by the front and back of the modular guard section.

Therefore, Heuss does not teach, disclose, or suggest "having top and bottom portions contained between front and back portions" and "the bottom portion being wider than the top portion" as recited in claims 1, 7, and 27; "a substantially wedge or triangular shape in cross section" as recited in claims 10, 12, 25, and 31; and that "the modular guard sections each comprise at least two telescoping members to allow adjustability of the length of a guard section" as recited in claim 21.

The Giampavolo Canadian reference (which is the same as U.S. Patent No. 6,408,768, previously of record), when combined with Heuss, does not make the invention obvious. Heuss does not teach or suggest a pallet guard. It requires that the items be stacked on it. It could thus

not be used as a pallet guard. To use it, one would have to unstack previously stacked items or lift up a pallet to place the Heuss device under it, making it clearly impractical for use as a pallet guard. The pallet guard of the invention merely needs to be placed in front of the pallet or goods.

Since Heuss is so different than a pallet guard and is a stacker device, needing to be placed under the goods, it would not be obvious to combine it with the Giampavolo reference, and even when combined, does not teach or suggest the invention as now claimed. As noted previously, the Giampavolo reference also completely fails to teach or suggest the wedge-shaped design of the present invention, a further distinction warranting a finding of non-obviousness.

Thus, Giampavolo in view of Heuss does not make independent claims 1, 7, 10, 12, 21, 25, 27, and 31 obvious.

Claims 2-4, 6, 9, 11, 13, 15-17, 19, 23, 26-30 and 32 depend directly or indirectly from above discussed independent claims and are, therefore, allowable for the same reasons, as well as because of the combination of features in those claims with the features set forth in the respective independent claims.

In view of the above, it is submitted that all claims in this application are now in condition for allowance, prompt notification of which is requested.

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY THROUGH
THE PATENT AND TRADEMARK OFFICE EFS
FILING SYSTEM ON NOVEMBER 21, 2007.

Respectfully submitted,



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